

Appl. No. 10/753,669
Atty. Docket No. 7537CQ
Amdt. dated April 9, 2007
Reply to Office Action of October 20, 2006
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 11, 13-52 are pending in the present application.

Independent claims 1 and 40 have been amended to include the features of a biosensor including a transducer.

Support for this amendment can be found now canceled claim 12.

Applicants have amended claims 13 and 14 to correct their dependency.

Rejection Under 35 USC §103(a) Everhart

Claims 1-11 and 15-52 have been rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,468,236 to Everhart et al.

Applicants submit that independent claims 1 and 40 have been amended to include the features of a biosensor including a transducer. It is Applicants' position that this amendment overcomes the rejection of claims 1-11 and 15-52. Reconsideration and withdrawal of the rejection are therefore respectfully requested.

Rejection Under 35 USC §103(a) Everhart in view of Al-Sabah

Claims 12-14 have been rejected under 35 USC §103(a) as being unpatentable over Everhart et al. '236 in view of Al-Sabah '723.

At the outset, Applicants submit that independent claims 1 and 40 have been amended to include the features previously found in now cancelled claim 12 and that claims 13 and 14 have been amended to depend on claim 1.

The Office alleges that "Al-Sabah discloses an absorbent article comprising an acoustic transducer 29 and an actuator 43, which comprises a power source 42 (Figure 7). The actuator performs a responsive function when the sensor detects an input (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention to incorporate a transducer as taught in Al-Sabah to the sensor apparatus of Everhart. Doing

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so would provide a means for alerting the user or a health care professional of the presence of the target analyte." Applicants respectfully disagree.

As best understood by Applicants, Al-Sabah discloses:

"[a]n apparatus and associated methods ... provided for sensing and indicating moisture for garments such as diapers, training pants, or adult undergarments. The apparatus preferably has a sensor housing and at least one moisture sensor connected to the sensor housing for sensing moisture in a selected location of a garment." (Emphasis added). (Abstract).

Applicants respectfully remind the Office that independent claims 1 and 40 include the features of "a biosensor including at least one bio-recognition element and a transducer, the biosensor being adapted to detect a target biological analyte present at a low concentration in bodily waste or on the wearer's skin."

Applicants submit that it is basic patent law that "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation ... to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicant's disclosure." *In re Vaeck*, 947 F.2d 488, USPQ 2d 1438 (Fed Cir. 1991). (Emphasis added).

As best understood by Applicants, Al-Sabah discloses that this is adapted to detect moisture and there are no indication whatsoever that such a sensor may be able to detect a target biological analyte. Similarly, Applicants submit that the Al-Sabah does not disclose that the transducer may be adapted to interface with a sensor other than a moisture sensor. Consequently, it is Applicants' position that one of ordinary skill would have had no motivation to modify Everhart to provide the transducer of Al-Sabah. In view of Al-Sabah disclosure, Applicants also submit that one of ordinary skill would have had no reasonable expectation of success to arrive at the claimed invention.

Consequently, it is Applicants' position that the Office has failed to establish a *prima facie* case of obviousness.

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Conclusion

In view of the previous amendments and remarks, it is submitted that all the claims are in condition for allowance. Early and favorable action on all claims is therefore respectfully requested.

If the next action is other than to allow the claims, the favor of a telephonic interview is requested with the undersigned representative.

Respectfully submitted,

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